to enter a decree directly contrary to the mandate of this court. It is to review this judgment of the Supreme Court of Arkansas that the petition for a writ of certiorari is filed.

The chancery court had no authority to permit an amendment to the pleadings in the *Fish* suit, or to entertain a new suit in the nature of a bill of review, without the express leave of this court. Its sole authority was to enter a decree in conformity with the mandate of this court. As said by this court in an early case:

> "The decree sought to be set aside by this bill of review in the court below was entered in pursuance of the mandate of this court, on an appeal in the original suit. It is therefore the decree of this court, and not that primarily entered by the court below, that is sought to be interfered with.
>
> "The better opinion is, that a bill of review will not lie at all for errors of law alleged on the face of the decree after the judgment of the appellate court. These may be corrected by a direct application to that court, which would amend, as matter of course, any error of the kind that might have occurred in entering the decree.
>
> "Nor will a bill of review lie in the case of newly discovered evidence after the publication, or decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly for the purpose. This appears to be the practice of the court of chancery and House of Lords in England, and we think is founded in principles essential to the proper administration of the law, and to a reasonable termination of litigation between parties in chancery suits."
>
> *Southard* v. *Russell*, 16 How. 547.

To the same effect see:

Gaines v. *Rugg*, 148 U.S. 228,

In re Potts, 166 U.S. 263,

National Brick & Electric Company v. *Christensen*, 254 U.S. 425,

Texas & Pacific Railway v. *Anderson*, 149 U.S. 237, 13 Sup. Ct. 843,

Chaffin v. *Taylor*, 116 U.S. 567,

Kansas City Southern Ry. Co. v. *Guardian Trust Co.*, 281 U.S. 1, 50 Sup. Ct. 194.

"'When a case has been once decided by this court on appeal, and remanded to the Circuit Court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The Circuit Court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.'"

Eastern Cherokees v. *United States*, 225 U.S. 572, 582.

II.

The judgment of this court in Kersh Lake Drainage District v. *Johnson*, 309 U.S. 485, *is res judicata of all the issues involved.*

Assuming, for the sake of argument, that the chancery court had authority without the leave of this court to permit the pleadings to be amended, or to entertain a bill attacking the validity of the *Fish* decree for fraud prac-

ticed on the court, the judgment of this court in the *Johnson* case is *res judicata* of every issue presented.

In the new suit attacking the *Fish* decree the respondents alleged that they were not made parties to the *Fish* suit. This court held in the *Johnson* case that they were not entitled to be made parties to that suit.

The respondents alleged that they had no notice of the *Fish* suit, and that notice was concealed from them. This court held that they were not entitled to notice.

The respondents alleged that the *Fish* decree was obtained by fraud and collusion. This court held that the record in the *Johnson* case did not reflect any evidence of fraud or collusion.

The respondents alleged that the *Fish* decree was not *res judicata* that the lands involved were not subject to further taxes. This court held that the decree was *res judicata* of that issue.

The chancery court held that the judgment of this court in the *Johnson* case was *res judicata* of all these matters. The Supreme Court of Arkansas held that it was not.

In its opinion the Supreme Court said: "If it be said that actual fraud was not proven, then, certainly, there was constructive fraud."

The court does not point out what constituted the supposed fraud, actual or constructive, except that the bondholders were not made parties to the suit and had no notice of its pendency. But this court held that they were not entitled to be made parties or to notice of the suit.

The Supreme Court of Arkansas says that one of the commissioners of the district, C. H. Holthoff, wrote certain letters to the fiscal agent of the respondent which were calculated to conceal the fact that the *Fish* suit was pending, and the court held that these letters constituted fraud on the court in obtaining the decree, and unavoidable casualty which prevented an appeal from the decree.

But the letters were not addressed to the chancery court and that court never heard of them, so they could not have constituted fraud on the court. They could not have prevented an appeal from the decree, either, for the decree was rendered June 15, 1932, the time for appeal expired December 15, 1932, (Pope's Digest, sec. 2746) and the letters set out in the opinion were dated respectively February 10, March 22 and April 17, 1933.

This is immaterial, however, in the case at bar. If the *Fish* decree was obtained by fraud, the respondents had an opportunity to allege and prove the fraud when the decree was pleaded as *res judicata*.

Chicot County Drainage District v. *Baxter State Bank*, 308 U.S. 371, 60 Sup. Ct. 317.

In the *Johnson* case in which the *Fish* decree was pleaded as *res judicata* the respondents did not attack the decree on the ground that it was obtained by fraud. They stood on the ground that they were not parties to the suit and were therefore not bound by the decree. True, they contended in this court that the decree was obtained by fraud and collusion, but this court held that the record did not reflect fraud or collusion. And this court sustained the validity of the *Fish* decree. When the *Johnson* case got back to the chancery court, and the respondents

instituted a new suit attacking the *Fish* decree for fraud, and sought to subject the lands to further taxes, the petitioners pleaded, not the *Fish* decree, but the judgment of this court sustaining the validity of the *Fish* decree, as *res judicata* of the issues sought to be raised.

The judgment of this court in the *Johnson* case is *res judicata* not only of every issue that was raised but of every issue which could have been raised.

> "The remaining question is simply whether respondents having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceedings, 'but also as respects any other available matter which might have been presented to that end'."
>
> *Chicot County Drainage District* v. *Baxter State Bank,* 308 U.S. 371, 60 Sup. Ct. 317.

See also:

Cromwell v. *County of Sac.,* 94 U.S. 351,

Case v. *Beauregard,* 101 U.S. 688,

Baltimore S.S. Co. v. *Phillips,* 274 U.S. 316, 47 Sup. Ct. 600,

Grubb v. *Public Utilities Commission,* 281 U.S. 470, 50 Sup. Ct. 374.

The fact that the petitioners relied on the judgment of this court in the *Johnson* case which sustained the

validity of the *Fish* decree, and not on the *Fish* decree itself, was specifically pointed out to the Supreme Court of Arkansas. The petition for a rehearing set forth:

> "The Fish decree was held to be *res judicata* by the Supreme Court of the United States in the *Johnson* case. The judgment of that court has therefore itself become *res judicata* of the fact that the *Fish* decree was *res judicata*. It is not claimed that fraud was practiced on the Supreme Court of the United States in the procurement of the *Johnson* decree."

For a strikingly similar case on the facts, see:

McIntosh v. *Wiggins*, 123 Fed. (2d) 316 (C.C.A.8)

III.

The Supreme Court of Arkansas denied full faith and credit to the judgment of this court in the Johnson case.

This court held that the respondents were not entitled to be made parties to the *Fish* suit; that they were not entitled to notice of that suit; that the record did not reflect any fraud or collusion; that the *Fish* decree was *res judicata;* and that the lands of the petitioners were not subject to further taxes.

The Supreme Court of Arkansas holds that the failure to make the respondents parties to the suit, and the failure to give them notice of the suit, or the concealment of notice from them, constituted a fraud on the court which vitiated the decree; that the *Fish* decree was not *res judicata;* and that the judgment of this court in the *Johnson* case was not *res judicata* of the fact that the petitioners' lands were not liable for further taxes.

In so holding, the Supreme Court of Arkansas did not give full faith and credit to the judgment of this court.

Speaking of its own judgment in a similar case this court said:

> "It was, at the time of the trial in the present case in the court below, a valid and subsisting adjudication of the matters in controversy, binding on these parties, and a bar to this action. In refusing to so decide, the court failed to give full faith and credit to the decree of this court."
>
> *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, 123 U.S. 552, 559.

See also:

Deposit Bank v. *Frankfort*, 191 U.S. 499.

IV.

Section 8246 *of Pope's Digest is not applicable to this case.*

The Supreme Court of Arkansas bases its action in refusing to give full faith and credit to the judgment of this court, and in refusing to obey the mandate of this court, on section 8246 of Pope's Digest of the Statutes of Arkansas. That section provides:

> "The court in which a judgment or final order has been rendered or made shall have power, after the expiration of the term, to vacate or modify such judgment or order:
>
> "Fourth. For fraud practiced by the successful party in the obtaining of the judgment or order.
>
> "Seventh. For unavoidable casualty or misfortune preventing the party from appearing or defending."

The respondents could have proceeded under this statute, and the chancery court could have vacated or modified the *Fish* decree, only so long as the decree remained the court's decree in the sense that it still had power over it. But after the decree became the subject of litigation which the respondents prosecuted to this court, and this court sustained its validity, and by its mandate ordered a decree to be entered in accordance with its judgment, the chancery court had no further power over the *Fish* decree, the whole matter had become merged in the judgment of this court, and the only authority which the chancery court had was to enter a decree in accordance with the mandate of this court.

Fraud or unavoidable casualty, if such a defense had been interposed and sustained, would have voided the *Fish* decree as *res judicata*. The defense was not interposed, and this court held that the decree was valid, and was *res judicata* of the liability of the petitioners' lands for further taxes. The respondents cannot now ignore the judgment of this court, nor can they attack the foundation on which it was based without the leave of this court. The foundation, whether valid or invalid, as of no further consequence. The state courts must accord full faith and credit to the judgment of this court, whether they now approve of the matters on which it was based or not.

> "The full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or inconsistency of the decision, or the validity of the legal principles on which the judgment is based. ★ ★ ★ Whatever mistakes of law may underly the judgment ★ ★ ★ it is conclusive as to all the media concludendi."
>
> *Milliken* v. *Meyers*, 311 U.S. 457, 61 Sup. Ct. 339.

V.

Whether or not the Supreme Court of Arkansas gave full faith and credit to the judgment of this court is a federal question that is reviewable by this court.

This proposition has been often announced, and will probably not be challenged.

Stoll v. *Gottlieb,* 305 U.S. 165, 59 Sup. Ct. 134,

Toucey v. *New York Life Insurance Co.,* 62 Sup. Ct. 139.

"Whether a federal judgment has been given due force and effect in the state court is a federal question reviewable by this court, which will determine for itself whether such judgment has been given due weight or otherwise."

Deposit Bank v. *Frankfort,* 191 U.S. 499, 515.

See also:

Cromwell v. *County of Sac.,* 94 U.S. 351,

Case v. *Beauregard,* 101 U.S. 688,

Baltimore S.S. Co. v. *Phillips,* 274 U.S. 316, 47 Sup. Ct. 600,

Grubb v. *Public Utilities Commission,* 281 U.S. 470, 50 Sup. Ct. 374.

CONCLUSION.

The judgment of the Supreme Court of Arkansas draws in question the validity of an authority exercised under the Constitution and laws of the United States; denies full faith and credit to the judgment of this court; and requires the chancery court of Lincoln county to refuse to obey the mandate of this court. We submit that the judgment of the Supreme Court of Arkansas should be reversed, and the cause should be remanded to that court with directions to enter a judgment affirming the decree of the Lincoln chancery court, which is in exact accordance with the judgment and mandate of this court in *Kersh Lake Drainage District* v. *Johnson*, 309 U.S. 485.

Respectfully submitted,

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